Oral Hearing:
September 28, 2004

Mailed: November 18, 2004

UNITED STATES PATENT AND TRADEMARK OFFICE
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Trademark Trial and Appeal Board
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In re Kabushiki Kaisha Sony Computer Entertainment
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Serial No. 76229696
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George W. Lewis and Philip L. O'Neill of Jacobson Holman for
Kabushiki Kaisha Sony Computer Entertainment.

Kathleen M. Vanston, Trademark Examining Attorney, Law
Office 103 (Michael Hamilton, Managing Attorney).
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Before Seeherman, Quinn and Walters, Administrative
Trademark Judges.

Opinion by Walters, Administrative Trademark Judge:

Kabushiki Kaisha Sony Computer Entertainment has filed
an application to register on the Principal Register the
mark VU COMMAND LINE for, *inter alia*, a variety of computer-
related products, including computer software, computer
programs, computer game programs and computer operating
programs, in International Classes 9 and 42.[1]

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[1] Serial No. 76229696, filed March 23, 2001, based on an allegation of a
bona fide intention to use the mark in commerce.

The application includes goods and services in International Classes 9, 16, 28, 35, 38, 41 and 42. The refusal pertains only to the goods and services listed below in International Classes 9 and 42, which is less than all of the classes and less than all of the goods and services in Classes 9 and 42.[2] The actual identification of goods and services is 52 pages long and we incorporate by reference the full identification of goods and services in the application, as amended.

Relevant goods in International Class 9:

Blank magnetic computer tapes; computer chips; computer game cartridges; computer game equipment containing memory devices, namely, disks; computer game programs; computer game software; computer game tapes; computer hardware; computer interface boards; computer memories; computer monitors; computer operating programs; computer operating systems; computer utility programs; interactive multimedia computer game programs; interactive video game programs; interactive video games of virtual reality comprised of computer hardware and software; video game cartridges; video game disks; video game software; video game tape cassettes; virtual reality game software; information microprogramming devices, namely, computer software for programming computer games; computer programs and computer application programs for designing and developing computer game programs; computer programs used for assembling, compiling and software development; computer game instruction manuals; coin-operated video games; stand alone video output game machines.

Relevant services in International Class 42:

Licensing of computer software; providing information regarding commercial sales of computer games and supply

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[2] Even though the refusal pertains to only some of the goods and services in International Classes 9 and 42, all of the goods and services in those two classes are denied registration upon affirmance of the refusal as to some of the goods and services in those two classes. *In re Analog Devices Inc.*, 6 USPQ2d 1808 (TTAB 1988).

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of computer games; providing information on sales of
compact disks for video software, game software,
business software, education software, multimedia
software and simulation software; retail store and mail
order catalog services featuring video games, DVD
videos and software for video games; providing online
computer games; electronic publishing services, namely,
publication of books and journals of others in the
field of video games; educational and instructional
services, namely, conferences and seminars in the field
of developing video game programs; educational and
instructional services, namely, conferences and
seminars in the field of computer graphics; maintenance
of computer software; monitoring the computer systems
of others and providing backup computer programs and
facilities; rental of computers and software; updating
of computer software; computer programming for others
for the encryption of data for computer systems;
computer programming for others for the securing of
information for computer systems; providing information
on computer games and computer game software appearing
in magazines, manuals and books via a computer network;
resulting services relating to developing computer game
programs and other computer programs; providing
temporary use of online nondownloadable software
featuring databases in the field of computer games;
providing an online computer database in the field of
computer software; computer services, namely, providing
online books and journals in the field of computer
games.

The final refusal to register included a requirement to
amend the identification of goods and services. Applicant
filed a request for reconsideration that adopted the
amendments proposed by the Examining Attorney; however, in
her summary denial of the request for reconsideration, the
Examining Attorney did not address applicant's amendments to
the identification of goods and services. Neither the
Examining Attorney nor applicant addressed this issue in
their respective briefs. We can only conclude that the
amended identification of goods and services is acceptable;

that the Examining Attorney has withdrawn the requirement

for amendment to the identification; and that this issue is

not before us in this appeal.

Additionally, we note that following the initial

refusal to register on the ground of mere descriptiveness,

applicant entered a disclaimer of "COMMAND LINE" apart from

the mark as a whole. The Examining Attorney found that the

disclaimer was unacceptable to obviate the descriptiveness

refusal and she reiterated that the mark as a whole is

merely descriptive. However, because the disclaimer entered

by applicant has not been withdrawn, it remains of record.

Now before the Board is the appeal by applicant of the

Trademark Examining Attorney's final refusal of

registration, under Section 2(e)(1) of the Trademark Act, 15

U.S.C. 1052(e)(1), on the ground that applicant's mark is

merely descriptive in connection with its goods and services

in International Classes 9 and 42.

Both applicant and the Examining Attorney have filed

briefs and an oral hearing was held. We affirm the refusal

to register.

The Examining Attorney contends that the mark is merely

descriptive, stating that COMMAND LINE describes the area on

the computer monitor screen that accepts typed commands in a

command-driven system; that VU is an acronym meaning "vector

unit," which is a processing unit designed to process

vectorized data, in other words, graphics data; that the individually descriptive terms VU and COMMAND LINE when combined do not create a mark with a separate non-descriptive meaning; and that the mark as a whole, VU COMMAND LINE, "describes computer programs and related hardware and programming and design services that use or contain command lines to direct vector unit processing … [in other words] it essentially describes a tool used in the development of graphics for computer software." (Brief, p. 6.)

In support of her position, the Examining Attorney submitted excerpts of articles retrieved from the LEXIS/NEXIS database and excerpts from Internet websites. The following are several representative examples:

> The setup disk that is created by most operating systems during installation should also have some **command line** programs on it, including Attrib.exe. [*PC Magazine*, June 5, 2001.]

> **command line**: in a command-driven system, the area on screen that accepts typed-in commands. [*TechEncyclopedia,* www.techweb.com, June 13, 2001.]

> "Development Techniques for Using Simulation to Remove Risk in Software/Hardware Integration": "Cygnus Next Generation Playstation Simulation Environment":
>   This section describes the Next Generation Playstation Simulator and environment developed by Cygnus Solutions for SONY Computer Entertainment.
>   . . .
>   The new system is capable of drawing 66 million polygons per second, which places it among

the world's fastest rendering engines. These
impressive results are due to the two Vector
Processing Units (VPUs) shown in Figure 2. Each
VPU contains a **Vector Unit (VU)**, and Vector
Interface FIFO (VIF), and local instruction and
data memory. A **VU** can issue one integer
instruction and one vector instruction per cycle.
… The last stage in the graphics pipeline is the
Graphics Processing Unit, or GPU.
[www.redhat.com, June 15, 2001.]

"CodeWarrior for PlayStation®2"
Version 3.01
   CodeWarrior for PlayStation 2 provides editing,
compiling and debugging capabilities, and the
solid debugging of GCC STABS and CodeWarrior DWARF
formats. And it's the most versatile tool suite
in game development today …. The tool suite is
also designed to allow you to write code once and
then port it to other game console products with
minimal changes.
   Whether you're a first-timer or a seasoned
developer of PlayStation 2 titles, you'll
appreciate the high performance and versatility of
the latest version of CodeWarrior for PlayStation
2 tools.
Benefits:
  • **VU** debugging tools now include a DMA debugger
and a **VU** static code analyzer.
                       . . .
Features:
                       . . .
  MultiCore Debugger:
                       . . .
    • Modified DVP assembler pref panel for
multiple preprocessors (including Sony's **vector
unit command line** tool, VCL) *NEW*

                       . . .
    • **VU** analyzer lets you look at cycle counts
from **VU** instructions
                       . . .
  CWComUtil:
                       . . .
    • Command-line execution window
[www.metrowerks.com, May 6, 2002.]

"Acronyms" by EDA Incorporated:

VU = vector units
[www.i-edainc.com/acronyms/v.]

"Vector graphics" – Vector graphics is the
creation of digital images through a sequence of
commands of mathematical statements that place
lines and shapes in a given two-dimensional or
three-dimensional space. … In vector graphics, the
file that results from a graphic artist's work is
created and saved as a sequence of vector
statements.
[www.whatis.com, April 25, 2002.]

"A New Series of Scalable Vector Parallel
Computers Offering Highest Performance at Lowest
Prices":
                            . . .
    The Fujitsu Siemens VPP300 Series is designed
to fulfill all requirements for a high-speed
computer in a computer center as well as in a
decentralized environment.
                            . . .
    Architecture:
                            . . .
    The **Vector Unit (VU)** is a powerful vector
processor featuring large-capacity vector and mask
registers and ultrahigh-speed vector pipes.
[www.fujitsu-siemens.de, April 25, 2002.]

Applicant describes its relevant goods and services to

be identified by the mark VU COMMAND LINE as follows (Brief,

p. 2):

[The mark is intended to identify] a video game
software development tool …. It is intended for
use by computer programmers for creating video
games for Applicant's PLAYSTATION 2 (PS2),
Applicant's popular and widely available home
entertainment system.

Applicant's VU COMMAND LINE video game software
development tool performs a variety of highly
specialized tasks involved in writing programming
for video games [for] Applicant's PLAYSTATION 2
home entertainment system. More specifically, it
is a vector code optimize processor and is used by

programmers for editing, compiling and debugging
vector code for the PS2 home entertainment system.

Applicant contends that the above-described video game software development tool "is neither a type of 'command line' nor a type of 'Vector Unit.'" (Brief, p. 2.) Applicant makes the following argument in support of its position that the mark is not merely descriptive (Brief, p. 4-5):

> Nothing in the words VU COMMAND LINE, separately
> or together, denotes or connotes a video game
> software development tool. Although the terms
> might imply to a computer professional some
> connection with graphics code, the actual meaning
> of the mark is vague and unclear. The mark does
> not describe what Applicant's product does or how
> it works.

Applicant argues that, while VU and COMMAND LINE may have descriptive elements, the composite mark, VU COMMAND LINE, is arbitrary as applied to applicant's goods; that a "command line" is "a non-specific feature of all kinds of software[,] … has no application to the particular performance or results of the Applicant's video game development tool[,] … does not refer to any intrinsic quality or feature of the Applicant's goods[,] … [and] neither modifies nor is modified by VU …." (Brief, p. 6)

The test for determining whether a mark is merely descriptive is whether it immediately conveys information concerning a quality, characteristic, function, ingredient, attribute or feature of the product or service in connection

with which it is used, or intended to be used. *In re Engineering Systems Corp*., 2 USPQ2d 1075 (TTAB 1986); *In re Bright-Crest, Ltd*., 204 USPQ 591 (TTAB 1979). It is not necessary, in order to find that a mark is merely descriptive, that the mark describe each feature of the goods or services, only that it describe a single, significant quality, feature, etc. *In re Venture Lending Associates*, 226 USPQ 285 (TTAB 1985). Further, it is well-established that the determination of mere descriptiveness must be made not in the abstract or on the basis of guesswork, but in relation to the goods or services for which registration is sought, the context in which the mark is used, and the impact that it is likely to make on the average purchaser of such goods or services. *In re Recovery*, 196 USPQ 830 (TTAB 1977).

As a further elaboration on these propositions, the mere descriptiveness of a mark is not determined from the standpoint of all consumers, but rather is determined from the standpoint of the relevant purchasing public of the goods and/or services for which registration is sought. *Magic Wand Inc. v. RDB Inc*., 940 F.2d 638, 19 USPQ 1551, 1552-53 (Fed. Cir. 1991); and *In re Montrachet S.A*., 878 F.2d 375, 11 USPQ2d 1393, 1394 (Fed. Cir. 1989).

The evidence establishes, and applicant does not dispute, that "VU" is a common acronym for "vector unit"

which is part of the hardware/software systems used for
creating computer graphics and video game graphics; and that
"command line" is a commonly used term defining the area on
a computer screen that accepts typed-in commands in a
command-driven system.

Applicant may describe its goods as a software
development tool, which is certainly encompassed by the
identification of goods in this intent-to-use application;
however, we must consider the descriptiveness of the mark in
the context of the entire identification of goods and
services, which includes an extensive list of goods and
services, all very broadly defined. The evidence
establishes that each of the individual components of
applicant's mark, "VU" and "COMMAND LINE," is descriptive,
as described above, of a significant feature of, at least,
the following identified goods in International Class 9:

    Computer operating programs; computer operating
    systems; information microprogramming devices,
    namely, computer software for programming computer
    games; computer programs and computer application
    programs for designing and developing computer game
    programs; and computer programs used for
    assembling, compiling and software development.

Each term is also descriptive of a significant feature of,
at least, the following identified services in International
Class 42:

    resulting services relating to developing computer
    game programs and other computer programs;
    providing temporary use of online nondownloadable
    software featuring databases in the field of

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computer games; providing an online computer
database in the field of computer software.

Additionally, each of the merely descriptive individual
components of the composite mark retain their meaning, *i.e.*,
VU is a common acronym for "vector unit," a processing unit
for graphics data, and, as applicant acknowledges with its
disclaimer, COMMAND LINE merely describes the area on the
computer monitor screen that accepts typed commands in a
command-driven system. While applicant has argued that the
mark as a whole has a different or unique non-descriptive
connotation, it has not indicated what that connotation is,
and the Board finds that no unique or different non-
descriptive meaning is created by the combination of these
two merely descriptive terms.

In conclusion, the mark, VU COMMAND LINE, is merely
descriptive in connection with applicant's goods and
services in International Classes 9 and 42, because it
immediately describes, without conjecture or speculation,
two significant features of applicant's goods and services
as described above. Nothing requires the exercise of
imagination, cogitation, mental processing or gathering of
further information in order for purchasers of and
prospective customers for applicant's goods and services to
readily perceive the merely descriptive significance of the
term VU COMMAND LINE as it pertains to applicant's goods and
services in International Classes 9 and 42.

Decision: The refusal to register under Section 2(e)(1) of the Trademark Act is affirmed as to the goods and services in International Classes 9 and 42. The mark in this application shall proceed to publication, in due course, in the remaining classes.